

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING CHANGE) RESOLUTION NO. 95- 2194
ORDER NO. 19 TO THE WASTE TRANSPORT)
SERVICES CONTRACT WITH JACK GRAY) Introduced by Mike Burton
TRANSPORT, INC.) Executive Officer
)

WHEREAS, Metro and Jack Gray Transport, Inc. executed Change Order No. 15 (Exhibit "A") to the Waste Transport Services Contract in order to allow Metro to purchase fuel for the performance of the contract and to enjoy substantial savings; and

WHEREAS, As explained in the accompanying staff report, Metro has realized savings in excess of the intent of Change Order No. 15; and

WHEREAS, Change Order No. 19 makes annual adjustments to Contractor payments to reflect the amount of fuel actually consumed during the period; and

WHEREAS, Per Metro Code 2.04.045 (b), such an amendment requires Metro Council approval; and

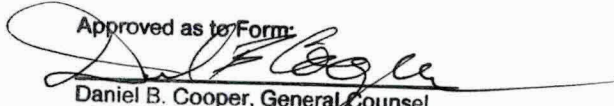
WHEREAS, The resolution was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now therefore,

BE IT RESOLVED, That the Metro Council authorizes the Executive Officer to execute Change Order No. 19 to the Waste Transport Services Contract attached as Exhibit "B".

ADOPTED by the Metro Council this 28 day of Sept, 1995.



J. Ruth McFarland, Presiding Officer

Approved as to Form:


Daniel B. Cooper, General Counsel

CHANGE ORDER NO. 15
METRO CONTRACT NO. 900848

MODIFICATION TO THE CONTRACT BETWEEN
METRO AND JACK GRAY TRANSPORT, INC.
ENTITLED
"WASTE TRANSPORT SERVICES"

PROJECT: Waste Transport Services
METRO POC: Jim Watkins, Engineering & Analysis Manager
CONTRACTOR POC: Gary Goldberg, Executive V.P.

This Amendment is to Metro Contract No. 900848, entitled "Waste Transport Services," dated March 1, 1989 (herein, "Original Contract"). In exchange for the promises and other consideration set forth in the Waste Transport Services Contract and this Amendment, the Parties agree as follows:

1. Purpose. The purpose of this Amendment is for Metro to supply fuel for Contractor's "over the road" tractors while exclusively used in transporting solid waste for Metro.
2. Fuel Delivery Periods. The initial period covered by this Amendment shall be from the date on which Metro begins supplying fuel to Contractor until June 30, 1994. Subsequent periods shall begin on July 1 of each year and end on June 30 of each subsequent year, until termination of the Original Contract between the Parties.
3. Termination. (a) Either Party may terminate this Amendment by giving notice to the other no later than April 30 of any period (other than the initial period), of pending termination on June 30. Upon termination, Metro's per load payments to Contractor shall revert to the adjusted amount that would have been paid under the Original Contract, had this Amendment not been executed.

(b) If the Internal Revenue Service (IRS) contacts Contractor, either through audit or otherwise, and indicates that it may have to pay federal excise taxes on fuel provided by Metro under this amendment, Contractor shall immediately notify Metro and provide Metro with a copy of all correspondence received from the IRS. Once Metro confirms that the IRS has made such a contact, the parties shall cooperate to contest the IRS and/or to establish a reasonable date for terminating this amendment. In either case, at the point at which Metro determines not to contest the IRS further, Metro shall pay directly to the IRS all amounts required to be paid to the IRS related to fuel provided to Contractor under this amendment and used by Contractor in conformance with this amendment.

4. Amount of Fuel Provided.

(a) The amount of fuel provided by Metro to Contractor for Metro's sole and exclusive use shall be equal to the number of loads projected for the period times 58 gallons. The projected number of loads shall be established by written notice from Metro provided on or before April 30 of each year for the subsequent period. Metro may update such notice, in writing, as necessary throughout the period. Metro shall also provide notice to its fuel supplier of the amount of fuel that may be provided to Contractor.

(b) If Contractor requires more fuel per actual load than provided by this section 4, Contractor shall be responsible for purchasing the additional fuel required during that period and for payment of all applicable taxes.

5. Exclusive Use of Metro. Fuel supplied by Metro to the Contractor is to be used exclusively for the performance of the Contract, and Contractor shall ensure, and comply with all Metro-established safeguards to ensure, that fuel provided by Metro is used only for the performance of the Waste Transport Contract.

6. Per Load Payment Reduction.

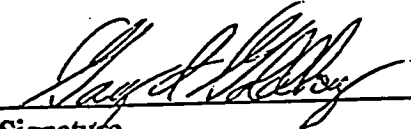
(a) From the date on which Metro begins supplying fuel to Contractor through September 30, 1994, the per load unit price paid to the Contractor shall be \$333.50.

(b) Beginning October 1, 1994, the per load unit price paid to the Contractor shall be \$332.92. This per load unit price shall be adjusted in the same manner as Contractor's unit price is adjusted as specified in Article 12 of the general conditions.

7. Fuel Deliveries. Metro shall make fuel available in a manner reasonably acceptable to Contractor and reasonably consistent with historical service levels obtained by Contractor.

8. Effect of Amendment. Except as modified herein, all other terms and conditions of the Contract and previous Change Orders shall remain in full force and effect.

JACK GRAY TRANSPORT, INC.



Signature

Gary I. Goldberg Ex. Vice Pres.
Print Name and Title

4-18-94
Date

1197

METRO


Signature

Rena Cusma
Executive Officer
Print Name and Title

4-12-94
Date

**CHANGE ORDER NUMBER 19
TO THE CONTRACT BETWEEN JACK GRAY TRANSPORT, INC.
AND METRO ENTITLED "WASTE TRANSPORT SERVICES"**

This Amendment, dated as of the last signature date below, is to Change Order 15 to the Waste Transport Services Contract, No. 900848. In exchange for the promises and other consideration set forth in the Waste Transport Services Contract and this Amendment, the Parties agree as follows:

- Section 4 of Change Order No.15 is deleted, and replaced with the following:

As soon as the necessary information is available after the end of a Fuel Delivery Period, Metro will perform the following calculation.

(loads transported during the period) (58 gallons)	= w
Gallons purchased by Metro for JGT during the period	= x
x - w	= y
(y)(\$0.96*)	= Fuel Credit

*For the period April 20th through September 30, 1994, a multiplier of \$.94 shall be used. For the period October 1 through December 31, 1994, \$.95 shall be used.

If the Fuel Credit is a positive number it shall be a Metro credit on Metro's next monthly payment to JGT under the waste transport contract. If the Fuel Credit is a negative number then the amount by which it is negative shall be an additional payment to JGT on Metro's next monthly payment to JGT under the waste transport contract. This procedure shall begin with the first fuel purchases of April 20, 1994 and including the Fuel Delivery Period ending June 30, 1995. The \$0.96 multiplier is adjusted at the same time and in the same amount as the JGT per load fee (per Article 12 of the General Conditions), beginning with the adjustment next occurring after the date of this Amendment.

- Except as modified herein, all terms and conditions of the original agreement and previous change orders remain in full force and effect.

JACK GRAY TRANSPORT, INC.

METRO

Signature

Signature

Print Name and Title

Print Name and Title

Date

Date

SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 95-2194, FOR THE PURPOSE OF APPROVING CHANGE ORDER NO. 19 TO THE WASTE TRANSPORT SERVICES CONTRACT WITH JACK GRAY TRANSPORT, INC.

Date: September 21, 1995

Presented by: Councilor McLain

Committee Recommendation: At the September 19 meeting, the Committee voted unanimously to recommend Council adoption of Resolution No. 95-2194. Voting in favor: Councilors Kvistad, McFarland and McLain.

Committee Issues/Discussion: Jim Watkins, Regional Environmental Management Engineering and Analysis Manager, reviewed the staff report. He noted that in April, 1994 Metro began to directly purchase the fuel used by Jack Gray Trucking to transport solid waste to the Columbia Ridge Landfill. Metro benefited from the arrangement because, as a governmental entity, Metro was exempt from paying the federal excise tax on the purchased fuel. It is estimated that this will save Metro about \$500,000 annually, or \$9 million over the life of the Jack Gray contract.

Because fuel costs were significantly reduced, Metro's per load payment to Jack Gray was to be reduced based on the average estimated amount of fuel used per trip times the price per gallon. Initially, payment reductions were to be based on a estimate of 58 gallons of fuel per trip, but, since limited data were available on actual fuel consumption, Metro and Jack Gray agreed to adjust the payment reduction when more accurate fuel consumption data was developed. The change order provided that if consumption was above 58 gallons per trip, Jack Gray would be required to purchase the fuel and pay the appropriate excise taxes. But no provision was made to compensate Jack Gray if fuel consumption was less than 58 gallons per trip.

Actual consumption has been less than 58 gallons per trip. As a result, Metro has deducted amounts from its payments to Jack Gray for fuel that Gray was not actually using (about 40,000 gallons).

This resolution addresses two issues. First, it makes an adjustment of \$36,825 in payments to Jack Gray to compensate the contractor for unused fuel for the period April 1994 through June 1995. Second, the resolution establishes a procedure for automatically making an annual adjustment to the Jack Gray payments based on the amount of fuel used times the average fuel price for the preceding two years. Basically, if fuel consumption exceeds 58 gallons per trip an adjustment will be made in Metro's favor and if consumption is below 58 gallons an adjustment will be made in Jack Gray's favor.

Metro will continue to receive all of the benefits from the

nonpayment of excise taxes and any positive benefits that result from reductions in fuel prices.

Councilor McFarland asked if some of the fuel savings that had been achieved by Jack Gray had resulted from the installation of governors that would not allow the trucks to go over 60 mile per hour. Watkins noted that governors had been installed, but that improvements in the fuel injection systems also had contributed to improved mileage.

Councilor McLain asked if the issue really was that the original change order did little to encourage fuel efficiency and that Metro had made payment deductions for fuel that had not been used. Watkins noted that this was case, largely because data on actual fuel consumption was not available at the time to original change order was negotiated.

M E M O R A N D U M

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METRO

DATE: September 11, 1995
TO: Councilor Patricia McCaig
FROM: Cathy Ross *CR*
RE: Resolution No. 95-2194

The Attached Resolution No. 95-2194 for the purpose of approving Change Order No. 19 to the waste transport services contract with Jack Gray Transport, Inc. has been assigned to the Solid Waste committee by Deputy Presiding Officer Rod Monroe.

Councilor Monroe requested I contact you, as Chair of the Finance Committee for a possible subsequent assignment to your committee.

Please advise me of your wishes as to the handling of this resolution.

Thank you.

cc: Councilor Monroe

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 95-2194 FOR THE PURPOSE OF APPROVING CHANGE ORDER NO. 19 TO THE WASTE TRANSPORT SERVICES CONTRACT WITH JACK GRAY TRANSPORT, INC.

Date: August 30, 1995

Presented by: Jim Watkins

PROPOSED ACTION

Adopt Resolution No. 95-2194, authorizing the Executive Officer to execute change order No. 19 to the Waste Transport Services Contract.

FACTUAL BACKGROUND AND ANALYSIS

On April 20, 1994, Metro began purchasing diesel fuel required for transporting waste from Metro facilities to the Columbia Ridge Landfill per Change Order No. 15 to the Waste Transport Services Contract. As a result, Metro will save approximately \$9 million over the life of the contract.

Per Change Order No. 15, Metro purchases fuel from suppliers. The purchase price does not contain the excise tax which the Contractor was required to pay. Savings accrue to Metro through a reduction in the per load payment to Jack Gray Transport (JGT). The amount of the reduction in payments was based on an estimate of fuel consumed per trip times a negotiated price per gallon. Both Metro and JGT agreed to reexamine and adjust (if appropriate) the amount of fuel consumed per trip at a later date when accurate fuel consumption data were available.

It has taken over a year to determine that the fuel assumptions in Change Order No. 15 overestimated fuel consumption, resulting in a larger reduction in the per load payment to JGT than appropriate. This length of time was needed to account for climatological changes and to consider the effects of more fuel efficient vehicles being introduced by the Contractor. In addition, staff had to devise a method to adjust for fuel consumption that was consistent with IRS rules.

Since April, 1994 Metro has saved approximately \$621,000 due to Change Order No. 15. Of these savings, about \$437,000 was due to excise tax savings. The \$184,000 additional savings was due to lower than anticipated fuel prices (about \$147,000) and the remaining approximately \$37,000 was due to lower fuel consumption than assumed. IRS rules maintain that Metro must enjoy all excise tax savings and assume the risk and benefits of fuel price fluctuations. Change Order No. 15 has accomplished both these objectives.

The inequity of Change Order No. 15 was that it did not provide a mechanism to compensate the contractor for conserving fuel while penalizing the contractor if they used more than 58 gallons

per load. The change order stated that if the contractor requires more fuel per load than 58 gallons, the contractor is responsible for purchasing the additional fuel required including paying the excise tax. It was the intent of both parties to operate for an extended period to determine a more representative value of fuel per load that would not penalize the contractor for conserving fuel and, in fact, promote the environmental and economic benefits of fuel conservation.

As a result, Change Order No. 19 was developed to compensate the contractor for the cost of the unused amount of fuel that had been deducted from the payments and develop a mechanism for future adjustments. The proposed Change Order will preserve Metro's savings due to the excise tax and continue Metro's risk position in relation to fuel prices. The change order will also adjust payments to the Contractor annually to correct for actual fuel consumption. If the Contractor averages fuel consumption per trip in excess of the multiplier, the Contractor will be required to compensate Metro, thus penalizing the Contractor for excess fuel consumption. If the Contractor averages fuel consumption below the multiplier, Metro will return the appropriate amount previously deducted from monthly payments.

BUDGET IMPACT

The \$9 million in savings originally projected for Change Order 15 remains unaffected. The adjustment due Jack Gray Transport per Change Order 19 is \$36,825.55 for the period of April 20, 1994 to June 30, 1995.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 95-2194.